

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In the Matter of JOHNATHAN PAUL BAAS,  
CASSANDRA RENEE BAAS, NARISHA RENEE  
BAAS, and MARK STEVEN ROUX, Minors.

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DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

DENISE HAMPTON-ROUX BAAS,

Respondent-Appellant,

and

MARK ROUX and JOHN DOE,

Respondents.

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In the Matter of MARK STEVEN ROUX, Minor.

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DEPARTMENT OF HUMAN SERVICES, f/k/a  
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MARK ROUX,

Respondent-Appellant,

and

DENISE HAMPTON-ROUX BAAS and JOHN

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UNPUBLISHED  
September 14, 2006

No. 267534  
Oakland Circuit Court  
Family Division  
LC No. 03-677201-NA

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DOE,

Respondents.

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Before: Murray, P.J., and Smolenski and Servitto, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother appeals as of right the orders terminating her parental rights to all four children pursuant to MCL 712A.19b(3)(b)(i), (c)(i), (g), (i), (j), and (l). Respondent-father appeals as of right the order terminating his parental rights to his son Mark under MCL 712A.19b(3)(a)(ii), (g), and (j). We affirm.

In March 2003, petitioner filed a temporary custody petition alleging that respondent-mother had whipped Johnathan with a plastic hose and belt leaving bruises and welts on his arms and legs. Johnathan and Mark were removed from respondent-mother's care and placed with respondent-father, the father of Mark. Cassandra and Narisha, who were living outside respondent-mother's home, continued in their placement.

Child abuse charges against respondent-mother arising from Johnathan's injuries were filed at the district court. Respondent-mother was found incompetent to stand trial on the charges for several months because of her failure to take medication and her low frustration level. Respondent-mother was initially expected to plead no contest to the allegations in the temporary custody petition in June 2003, but the court delayed the proceedings, concerned about respondent-mother's competency to render the plea, after respondent-mother informed the court that she had not taken her medication. Respondent-mother subsequently entered her plea to the petition on August 19, 2003, and the court took the children into its jurisdiction. Respondent-mother was provided with a parent-agency agreement, but she failed to substantially comply with its terms.

Mark was taken out of respondent-father's care in September 2003 after respondent-mother violated the court's no-contact order and was found at respondent-father's home while Mark was there. Mark was placed with respondent-father's brother and sister-in-law. The caseworker testified that respondent-father contacted her a single time about Mark, but never contacted her again after she asked him to provide certain documentation, including a plan for caring for the child. Although respondent-father had been summoned and ordered to appear at the March 2004, July 2004, and March 2005, hearings, he was not made a party to the proceedings until the termination petition was filed on April 25, 2005.

At the September 6, 2005, hearing, the prosecutor informed the court that he had been advised that both respondents intended to enter no-contest pleas to the allegations in the petition. Respondent-mother's counsel asked respondent-mother on the record to confirm that they had discussed the plea to the permanent custody petition and that her plea was knowingly and voluntarily given. The court then proceeded to take both respondents' pleas. During the course of doing so, the court mistakenly stated that respondents' pleas would lead the court to taking "temporary" jurisdiction over the children and result in the "temporary" removal of the children.

A plea form executed by both respondents also referenced “temporary jurisdiction,” “temporary removal,” and compliance with a parent-agency agreement.

Following respondents’ pleas, the caseworker testified at the hearing regarding respondent-father’s failure to follow through with his initial request to visit with Mark. Following the testimony, the court asked respondents’ attorneys whether they were satisfied that the pleas were freely, knowingly, and voluntarily given, and both attorneys answered affirmatively.

Following the plea proceeding, respondents and the children submitted to a psychological evaluation for purposes of the best interests hearing. The evaluation concluded that respondent-father was unlikely to meet his son’s needs and that respondent-mother was unable to demonstrate the environmental and emotional stability necessary to effectively meet her children’s needs. The prosecutor introduced the evaluation into evidence at the best interests hearing and rested. Neither of respondents’ attorneys objected to the admission of the evaluation. Both attorneys indicated that they were not presenting any evidence, asking the court to consider all the evidence presented in rendering its decision.

Finding that the pleas established the statutory grounds for termination and that the psychological evaluations had not presented any evidence that termination of either respondents’ parental rights would be contrary to the children’s best interests, the court entered an order terminating respondent-mother’s parental rights to all four children and respondent-father’s parental rights to Mark.

On appeal, respondent-mother argues that her plea to the permanent custody petition was not knowingly and voluntarily given because the court, by mistakenly referencing “temporary” jurisdiction and removal of the children, failed to advise her of the consequences of her plea to the permanent custody petition. Because respondent-mother failed to move to withdraw her plea in the lower court, the issue of whether her plea was knowingly given is not preserved. Even if considered, the record establishes that, while the court’s statements failed to advise respondent-mother of the consequences of her plea, the court’s error did not affect respondent-mother’s substantial rights. *In re Osborne, (On Remand, After Remand)*, 237 Mich App 597, 606; 603 NW2d 824 (1999).

The record, exclusive of respondent-mother’s plea, established that respondent-mother had had her parental rights to a fifth child terminated in a prior proceeding. Respondent-mother’s no-contest plea to the temporary custody petition established her history with protective services for abuse and neglect of the children. These facts were sufficient to establish the statutory grounds for termination of respondent-mother’s parental rights under §§ 19b(3)(i) and (l). Because there was no possibility of respondent-mother prevailing with respect to at least two of the statutory grounds relied upon by petitioner to support termination, the court’s error in failing to advise her of the consequences of the plea does not warrant reversal.

Respondent-mother also argues that she was denied the effective assistance of counsel by counsel’s failure to correct the court’s defect in the plea-taking process and her failure to present any evidence at the best interests hearing. To prevail on a claim of ineffective assistance of counsel, the respondent must show that her trial counsel’s performance was deficient and that there is a reasonable probability that, but for counsel’s unprofessional errors, the result would

have been different. *In re CR*, 250 Mich App 185, 198; 646 NW2d 506 (2002). Because the record established at least two statutory grounds for termination exclusive of respondent-mother's plea on the permanent custody petition, respondent-mother could not establish her claim of ineffective assistance of counsel with respect to counsel's failure to correct the trial court's errors in the plea process. Furthermore, by failing to indicate what evidence her counsel should have presented at the best interests hearing that would possibly have altered the outcome, respondent-mother has also failed to establish her claim of ineffective assistance of counsel with respect to the best interests hearing.

On appeal, respondent-father argues that there was insufficient evidence to support termination of his parental rights under any of the three statutory grounds cited by the court. Because respondent-father pleaded no contest to the allegations in the permanent custody petition establishing the statutory grounds for termination, this issue is not preserved. Nonetheless, a review of the record shows that the trial court did not clearly err in terminating respondent-father's parental rights under §§ 19b(3)(a)(ii), (g), and (j). The fact that respondent-father was not made a party to the instant proceedings until the filing of the permanent custody petition did not bar the court from proceeding to terminate his parental rights. See *CR*, *supra* at 203. Thus, respondent-father's argument must fail.

Respondent-father also argues that termination of his parental rights was contrary to Mark's best interests, where Mark had been placed in his care between March 2003 and September 2003, and was removed because of respondent-mother's misconduct, not any concern over the care he was providing. Section 19b(5) provides for termination of a respondent's parental rights where there are statutory grounds for termination "unless the court finds that termination of parental rights to the child is clearly not in the child's best interests." The primary beneficiary of this analysis is to be the child. *In re Trejo*, 462 Mich 341, 356; 612 NW2d 407 (2000). In this case, the psychological evaluation of respondent-father concluded that respondent-father was unlikely to meet Mark's needs and that Mark was unlikely to experience any additional harm if respondent-father's parental rights were terminated. Under these circumstances, the trial court did not clearly err when it concluded that termination of respondent-father's parental rights to the child was not contrary to the child's best interests.

Affirmed.

/s/ Christopher M. Murray  
/s/ Michael R. Smolenski  
/s/ Deborah A. Servitto